IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22503 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RISHIROOP ORGANICS PVT. LTD & 1 - Petitioner(s)

Versus

UNION OF INDIA & 1 - Respondent(s)

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Appearance :

MR NAVIN K PAHWA for Petitioner(s) : 1 - 2.

MR JITENDRA MALKAN for Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 23/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 On 21/11/2005 after hearing the learned Advocate for the petitioners notice for final disposal was issued making the same returenable on 23/12/2005. Today when the matter is called out Mr.Malkan states he has no instructions. On verification of the records it is found that the notice issued by the Court was received by the respondent authority on 5/12/2005. In these circumstances, the request made on behalf of the respondent authorities is rejected and the Court proceeds with the hearing of the petition.

2 Considering the facts of the case and the view that the Court is inclined to take, the

matter is taken up for final hearing and disposal.

2 RULE. Mr.Malkan is directed to waive the service of Rule.

3 The facts briefly stated are that on 11/6/1988 the officers of Central Excise Department visited the factory premises for preventive check. On 18/1/2000 a show cause notice was issued. The petitioner replied to the same on 31/7/2000. This was followed by personal hearing granted on 8/1/2001.

4 After a period of nearly four and half years on 26/7/2005 the petitioner received a letter dated 19/7/2005 calling upon the petitioner to remain present on 26/7/2005 at 12.00 Noon for personal hearing. Thereupon, the petitioner wrote to the respondent authority to grant adjournment

as Director of the petitioner company had prior commitments upto 8/8/2005 and requested that hearing be fixed after 8/8/2005.

5 In response thereto the petitioner received communication dated 29/7/2005s fixing hearing on 5/8/2005, and in the alternative, on 8/8/2005. The petitioner therefore wrote to respondent No.2 and the said communication reads as under :

"Re :Personal hearing fixed by your goodself for 5/08/2005 or 8/08/2005.

Dear Sir,

We are in receipt of your letter dated 29th July,2005 from file no.V(Ch 39) 15-73/OA/99/2600 regarding the captioned subject matter.

As stated in our letter dated 26/07/2005, our Director is out of station and will return on 9th August 2005 from business trip. Therefore, we request you to fix the date of personal hearing on any date on or after 11th August 2005.

We also reiterate that the matter is very old and all the details are yet to be traced and we need time to search for the same.

We request that we will be granted the additonal time and further request that no order is passed without hearing us in the matter".

6 The grievance of the petitioner is that respondent No.2 instead of granting the request made by the petitioner proceeded to pass impugned order dated 26/9/2005 without granting opportunity of hearing to the petitioner or considering the written submissions made by the petitioner on 8/8/2005 by a separate communication.

7 The impugned order contains the following paragraph in relation to personal hearing :

> “PERSONAL HEARING :
> The personal hearing was granted and Shri P.D.Shah, Advocate and Shri Ramesh M.Tavhare appeared before the Additional Commissioner, Central Excise, Surat-II on 08.01.2001 and relied upon reply dtd.31.07.2000. They filed various judgments in their favour. The filed copy of OIO No.64/Addl/OA/97-DC dtd. 15.05.98 passed by the Deputy Commissioner, Central Excise, Surat-II. Subsequent to change in adjudication

> powers vide Central Board of Excise & Custom's Circular No.752/68/2003-CX dtd 01.10.2003, the case was, transferred to the undersigned for adjudication accordingly the assessee was granted personal hearing on 26.07.05, 27.07.05, 05.08.05 & 08.05.05 which the assessee failed to attend therefore in the interest of justice the case cannot be kept pending indefinitely, I take up the matter for decision on the basis of available records."

8. On going through the impugned order it is apparent that respondent No.2-authority has not even adverted to the reason for which adjournment was sought, nor has assigned any reason why the request was rejected. Referring to the hearing which took place in 2001 and proceeding on that footing loses sight of the basic fact that it was not the present incumbent who heard the petitoner. Therefore, respondent No.2 cannot claim to be aware as to what transpired at the said hearing. Apart from that

when one reads the impugned order as a whole in the entire portion that follows under the heading 'DISCUSSIONS AND FINDINGS' there is no reference to the written submissions made on behalf of the petitioners and as to how they are not acceptable to the respondent authority. Reference to the communication dated 31/7/2000 in the earlier part of the order does not absolve the authority from dealing with the subsequent submissions made on 8/8/2005.

9. It goes without saying that the respondent authority is discharging a quasi judicial function and is required to follow the principles of natural justice. This would take within its fold adequate and reasonable opportunity of hearing. When on 8/8/2005 the petitioner requested that the hearing be fixed on any day after 11/8/2005, either the authority ought to have acceeded to the request or ought to have

given cogent reasons for rejecting the same. It is not even the case of respondent No.2 – authority, at least none appears from the order, that the assessment was getting barred by limitation so as to be constrained to proceed ex-parte. In light of the fact that the respondent authority had taken more than a period of four and half years between the two hearings, it was not proper on part of the respondent authority to reject the request for adjournment for a period of three days or more.

10 In the aforesaid backdrop of facts and circumstances of the case, the impugned order cannot be permitted to stand and operate. Accordingly, Order-in-Original No.VAPI-I/45/2005-2006 dated 26/9/2005 is hereby quashed and set aside and the proceedings restored to the file of respondent No.2. Respondent No.2 is directed to grant full and reasonable opportunity of hearing

to the petitioner before passing any order of adjudication.

11. The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani,J)

m.m.bhatt